the Department "recommended that the [petitioner's] claim be sustained" (R. 30, 63; see R. 51-52). Thereafter, the proceedings were reopened and petitioner was classified as I-O (R. 13).

On June 11, 1956, the local board mailed to the petitioner another SSS Form No. 152 and noted that, if he desired employment with an agency other than an Illinois State mental hospital, he should make his own arrangements, present a letter of acceptance to the local board from the agency concerned, and seek approval (R. 66, 94). No reply was received by the local board. In September 1956, the board again requested the petitioner to complete and submit Form 152 (R. 67, 94). No reply was received. On October 1, 1956, the local board submitted three types of work at the State Mental Hospital, Elgin, Illinois, to the petitioner, and requested him to "submit the kind of work [which he was] willing to accept" (R. 68, 94). On October 9, 1956, the petitioner mailed a letter to the local board which read in part (R. 13-14, 93):

> I am sorry for the delay of this letter. My time has been consumed in the services of the Temple of Islam No. 2. I have taken full responsibility of being a full time worker for the Temple of Islam. I have dedicated my life to the services of Islam. I am preparing myself in the hopes to become a Religious Teacher of Islam.
>
> The Temple of Islam is depending on its Muslims for support in every way. I couldn't possibly work successfully for any other organization. I have willingly pledged twelve to six-

teen hours of everyday to help benefit the Temple of Islam in anyway it finds necessary.

* * * *

My life and my death is all for Allah. I sincerely hope the Board will consider the work I am doing as a necessity in my life. Knowing the Temple of Islam receives no aid whatsoever from other than the Muslims belonging to it I could not do very well as a worker for any other Organization.

* * * *

In October and November 1956, the local board again submitted to petitioner three types of work at the State Mental Hospital, Elgin, Illinois, and requested him to choose the type of work which he was "qualified and willing to do" (R. 70, 71, 94). Petitioner did not reply to these letters. On January 3, 1957, the board wrote the petitioner that he should attend a board meeting on January 15, 1957, at which time a representative from the office of the State Selective Service Director would "offer his assistance to [him] and to help [him] and the local board reach an agreement" (R. 72; see R. 27, 37, 69-70).

On January 15, 1957, the petitioner appeared before the local board and Lieutenant Colonel Francis Woodworth, the Deputy State Selective Service Director. The petitioner stated that he was employed full time in a restaurant operated by the Inner Muslim Temple in Chicago—which meant that he "hadn't time to do anything else"—that his spare time was occupied with the study and teaching of Islam, and that he was unwilling to participate in the civilian work program (R. 14-15, 27-29, 30-32, 74-75). The

petitioner was permitted to withdraw the earlier civilian work preferences which he had submitted to the board in March 1956 (R. 27, 74, 95).

Shortly thereafter, petitioner was ordered to report for work on March 4, 1957, at the Elgin State Hospital, Elgin, Illinois. He refused to comply with the order and was indicted in August 1957 (R. 7-8, 32, 94). On April 1, 1958—prior to trial on the indictment—the petitioner requested the State Selective Service Director to reclassify him as a minister (R. 81-82). He mentioned the fact that, in the hearing on his conscientious objector claim, and in the Department of Justice report on that claim, reference had been made to his attendance at the University of Islam, and he stated that he had been "improperly recommended" for conscientious objector classification. In a letter of April 10, the office of the State Director informed the petitioner that it had reviewed the contents of his file and found that there was no basis upon which to reopen his classification (R. 15).

A trial on the indictment followed, and the petitioner was found guilty on May 20, 1958. In September 1958, the district court set aside the verdict of guilty and granted the petitioner's motion for a new trial on the ground that the local board's order to report to the hospital was invalid as "not signed by a member of the local Board as required by the Regulations" (R. 9; see R. 56). Thereafter, the United States Attorney made a request to the Illinois Selective Service Headquarters that "a new order be issued in order that he may proceed to a new trial

in accordance with the Judge's decision" (R. 56). On October 21, 1958, the local board "reconsidered" but did not alter the petitioner's classification (R. 34). On the same day, it ordered him to report to the local board on November 3, 1958, where he would be given instructions to report to the Elgin State Hospital (R. 82-83, 94). On October 31, 1958, the petitioner wrote the board that at the time of his letter of April 1, 1958, *supra*, he "was and [is] a minister of the Temple of Islam." He requested reclassification as a minister, and asked for a hearing before the local board (R. 84).

The petitioner reported to the local board on November 3, 1958, but refused to proceed to the hospital (R. 35, 38, 86, 94). On November 10, 1958, the board wrote the petitioner as follows (R. 87):

> Please be advised the Local Board considered this matter closed as such evidence of ministerial duties have been considered by them; therefore no further action will be taken in this case.

Petitioner was tried on both indictments, acquitted on the one stemming from the 1957 order and convicted of failing to report in November 1958 (see opinion of the district court, R. 9-22).

ARGUMENT

1. The petitioner's chief contention (Pet. 9-15) is that the local board erred in refusing to reopen his classification and to classify him as a minister of religion (IV-D classification). The petitioner did not, however, claim to be a "minister" until April 1, 1958, after his indictment for refusing to comply with the original board order of February 1957 (see R. 15,

37-38). His claim at that time came too late unless it was sufficiently supported by a factual showing warranting reclassification. Petitioner made no such showing, and therefore his claim did not require the Selective Service System to reopen his case.

In his letter of October 1956 (*supra*, pp. 6-7), mailed almost four months after the local board, through repeated inquiries, had attempted to induce him to specify the types of civilian work which he was able and willing to do, the petitioner merely stated that he was a "full time worker" of the Temple of Islam No. 2; that he was preparing himself "in the hopes" of becoming a "Religious Teacher of Islam"; and that since the Temple was "depending on its Muslims for support in everyway", he "could not possibly work successfully for any other organization" (R. 13-14, 93). The petitioner did not seek reclassification at that time, or assert that he was a minister of religion. Three and a half months later—at the January 15, 1957, meeting with the local board—the petitioner told the board that he worked full time in a restaurant which was operated by the Temple, and that he would not perform work in the civilian program (R. 14-15, 27-29, 30-32, 74-75). He did not make a ministerial claim at that time.

The contention (Pet. 18-19) that the petitioner was denied the opportunity to present his claim for ministerial exemption to the board at the meeting of January 15, 1957, because Lieutenant Colonel Woodworth, the Deputy State Selective Service Director, was in attendance and "dominated" the proceedings is without any foundation. That meeting was called

for the express purpose of assisting the petitioner in reaching an agreement as to the type of civilian work he would accept and be willing to perform (R. 27, 37, 69-70, 72), and it was proper under the regulations for a representative of the State Selective Service Director to be in attendance for that purpose. See 32 C.F.R. 1660.20(c), *supra*, p. 4. The record shows that the meeting was confined to the purpose for which it was called and that Col. Woodworth's participation was wholly proper; the trial court found explicitly that it "does not appear that Col. Woodworth interfered in any way with the local Board's classification of the defendant or that he interfered with the independent judgment of its members" (R. 21).

Not until his letter of April 1, 1958, following his indictment for refusal to comply with the February 1957 order to report, did petitioner make a claim to be a minister. Even at that time, he made his claim to the State Director and not to the local board and offered no evidence of his ministerial activities beyond reference to his studies at the "University of Islam" and to statements at a Department of Justice hearing which had been concerned, not with ministerial claims, but with his claim of conscientious objector status. The State Selective Service Director informed the petitioner on April 10 that it had reviewed his file and that there was no basis upon which it could reopen his classification (R. 15-16).

Petitioner made no further attempt to seek ministerial status until October 31, 1958, after the second order to report. Again, he merely presented a bare claim to ministerial exemption, making reference to his letter of April 1, 1958. The local board had

already, on October 21, 1958, "reconsidered" but not altered his classification and had ordered him to report for civilian work (R. 34-35). In November 1958, the local board informed the petitioner that it considered the matter "closed" since it had previously considered his "ministerial duties" in classifying him (R. 87). This action was proper under 32 C.F.R. 1625.4, *supra*, pp. 3-4, which provides that a classification need not be reopened if the request for reopening fails to present new facts or when the new facts, if presented, would not justify a change in classification. Petitioner presented no new *facts*, either to the local board or to the state selective service authorities.

Moreover, reopening was properly refused since, at the time petitioner's ministerial exemption claims were made known to the Selective Service System (in April and October 1958), outstanding orders had been issued to him to report for civilian work. Selective Service Regulation Number 1625.2, 32 C.F.R. (Cum. Supp., 1961) 1625.2, *supra*, p. 3, provides that the "classification of a registrant shall not be reopened after the local board has mailed to such registrant * * * an Order to Report for Civilian Work * * * unless the local board first specifically finds that there has been a change in the registrant's status resulting from circumstances over which the registrant had no control." *Feuer* v. *United States*, 208 F. 2d 719, 720-721 (C.A. 9); *Keene* v. *United States*, 266 F. 2d 378, 381-383 (C.A. 10). Although the order of February 1957 may have been technically invalid for failure to have a proper signature (see *infra*, pp. 14-15), it was an Order to Report within the meaning of this regulation, which had as one of its purposes the prevention

of last minute efforts to seek exemption from civilian work by belated claims of changes in status, such as the acquisition of ministerial status. Petitioner plainly did not show, or seek to show, that any change in his status resulted from circumstances over which he had no control.

2. Petitioner's contentions (Pet. 18, 19-21) that the district court erred in various rulings at the trial are likewise without merit on this record.

a. The Department of Justice resumé, which constituted a portion of the petitioner's selective service file, was correctly introduced into evidence. It was a properly authenticated document of a department of the government and admissible as such under 28 U.S.C. 1733. See Rule 27, F. R. Crim. P., and Rule 44, F. R. Civ. P.; *United States* v. *Borisuk*, 206 F. 2d 338, 340 (C.A. 3); *Kariakin* v. *United States*, 261 F. 2d 263, 265-266 (C.A. 9). Since petitioner based his ministerial claim partially on the Department of Justice hearing officer's report, the resumé connected with that report was relevant.

b. The trial judge properly excluded defense testimony offered to show that petitioner was acting as a minister after 1956 (R. 39, 40-41, 42, 43, 44). Since petitioner had not adduced this evidence before the local board, it did not bear on the validity of the board's action—the only issue before the court. The question before the court was whether petitioner's classification should have been reopened, not whether he could support his ministerial claim with facts never presented to the Selective Service System. As shown above, the district court properly resolved the reopening issue against petitioner.

c. No error was committed when the trial court ordered the consolidation of the two indictments against the petitioner. It was proper to order one trial on the two indictments since a similar offense (*i.e.*, failure to report to the hospital as directed) arising out of the same general course of conduct was charged in each indictment, and "could have been joined in a single indictment." Rule 13, F. R. Crim. P., *supra*, p. 4; *Williams* v. *United States*, 168 U.S. 382, 390-391. Cf. Rule 8(a), F. R. Crim. P.; *Gomez* v. *United States*, 245 F. 2d 344, 345-346 (C.A. 5), certiorari denied, 355 U.S. 863; *Williams* v. *United States*, 265 F. 2d 214, 215-216 (C.A. 9). The trial was to the court without a jury, and it is clear from the record that no confusion or prejudice resulted from the consolidation. There is no foundation, nor does the petitioner suggest one, for the claim (Pet. 21) that the consolidation of the two indictments rendered the substance of the trial so complex that a jury could not have understood the proceedings, and that, therefore, the petitioner was coerced into waiving trial by jury. Whatever the motivation which prompted the petitioner to waive trial by jury, the fact remains that he, with the advice of counsel, voluntarily and understandingly waived a jury.

3. As noted in the Statement, *supra*, pp. 8-9, after the verdict on the first trial was set aside on the ground that the order to report to the hospital was "not signed by a member of the local Board as required by the Regulations" (R. 9, 56), the United States Attorney requested that a new order be issued. The petitioner raised in a petition for rehearing below and argues here (Pet. 17-18) that the October 1958

order to report to the draft board and from there to the hospital was improperly issued because compliance with such an order would have necessitated a breach of his bail bond (given in connection with the first indictment). But reporting to a civilian hospital would not have prevented petitioner from appearing in court if his presence were required. Furthermore, although the first indictment was still outstanding and the petitioner at large on bail in the Fall of 1958 (when the second order was issued), it was apparent that if he had complied with the later order there would have been no prosecution under the earlier indictment.[1]

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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[1] Petitioner was acquitted on that indictment on the ground that the order was invalid.

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